IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

Income Tax Application No. 132 of 1997

M/s. Malani & Co. .. Applicant
V/s.
The Commissioner of Income-Tax,
Mumbai City I, Mumbai .. Respondent

Ms. Aasifa Khan i/b. Mr. V.B. Joshi & Mr. S.M. Lala for the Applicant
Dr. P. Daniel for the Respondent

CORAM : S. RADHAKRISHNAN &
A.S. AGUIAR, JJ.
DATED : 14.06.2005.

P.C.:-

1. Heard the learned counsel for the Applicant and the learned counsel for the Respondent. Rule. Rule made returnable forthwith. The learned counsel for the Respondent waives service. By consent taken up for hearing. In the above, following substantial questions of law are sought to be raised:-

(I) Whether, the Tribunal was right in holding that tenancy rights enjoyed or possessed by the assessee within the provisions of Bombay Rents, Hotel Lodging House Rates Control Act, 1947, is a right that is personal in nature and that such personal right is not transferable?

(II) Whether, the Tribunal was right in holding that tenancy rights or possessory rights surrendered by the assessee to the landlord is not a capital asset within the meaning of the Income-tax Act, 1961?

(III) Whether, the Tribunal was right in holding that surrender of tenancy rights or possessory rights is not a transfer within the meaning of section 2(47) of the Income-tax Act, 1961?

(IV) Whether, the Tribunal was right in holding that the amount received on surrender of tenancy or possessory rights is income within the meaning of section 2(24) of the Income-tax Act, 1961?

(V) Whether on the facts and in the circumstances

of the case and in law, the receipt of Rs. 6,45,000/- by the applicant on the

surrender/termination of the possessory rights is casual and non-recurring receipt within the meaning of section 10(3) of the Income-tax Act?

(VI) Whether the Tribunal was right in holding that the capital gains which do not fall under the ambit of section 45 of the Income Tax Act, the same would be considered as income eligible to tax under section 10(3) of the I.T. Act.

(VII) Whether the Tribunal was justified in not referring to the CBDT Circular No. 158 dated 27.12.1974, which was submitted in the course of hearing of the appeal, stating that under the provisions of section 10(3) only receipts in the nature of income would be brought to tax and not the capital receipts, and such circular was binding on the Assessing Officer?

(VIII) Whether Tribunal was justified in holding that for the purpose of section 10, no distinction exists between the revenue receipts and the capital receipts and that both would be covered under section 10 of the I.T. Act?

2. Both the learned counsel for the Applicant and the learned counsel for the Respondent categorically state that the issue raised in the above is squarely covered by judgment of this Court in **Cadell Weaving Mills Co. P. Ltd. v. C.I.T. [2001] 249 ITR 265 (Bom.)**.

3. In the aforesaid facts and circumstances, Application is made absolute in terms of prayer clause (a).

(S. RADHAKRISHNAN, J.)

(A.S. AGUIAR, J.)